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December 16, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

In re: GN Docket No. 96-228  
Amendment of the Commission's Rules to Establish  
Part 27, the Wireless Communications Service

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. are an original and eleven copies of its Reply Comments in the above-captioned matter.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Sincerely,

  
George Y. Wheeler

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**DEC 16 1996**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of )  
 )  
Amendment of the Commission's Rules ) GN Docket No. 96-228  
to Establish Part 27, the Wireless )  
Communications Service ("WCS") )

To: The Commission

**REPLY COMMENTS OF  
TELEPHONE AND DATA SYSTEMS, INC.**

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys, submits its reply comments in response to the numerous comments filed with regard to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. Our reply comments address two aspects of the Commission's proposals: Nationwide licensing (NPRM, ¶ 10), which should be rejected; and the Commission's "franchising" or leasing proposal (NPRM, ¶¶ 16 and 29) which should be adopted as discussed here.<sup>1</sup>

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<sup>1</sup> The abbreviated names used to refer to the comments filed by other parties are listed beside the full name of that party in the attached Certificate of Service.

## DISCUSSION

### 1. The Record in this Proceeding Provides an Ample Basis for the Commission to Reject Nationwide Licensing.

In our comments, we strongly opposed the adoption of WCS licensing on a nationwide basis. Based on our review of the more than fifty sets of comments in this proceeding, our opposition is shared by a very broad cross-section of commenters, including associations (CTIA, PCIA and UTC), cellular licensees (AT&T Wireless, AirTouch, Bell Atlantic/NYNEX, BellSouth, Florida Cellular, GTE, Guam Telephone, Puerto Rico Telephone, SBC, Vanguard Cellular and others), broadband PCS licensees (Pacific Telesis, PrimeCo, Omnipoint, Pocket...as well as others previously listed as cellular licensees), and small business/rural telephone/entrepreneurs (ADC, DSC, Digivox and RTG). Many argued specifically opposing nationwide licensing. Others made extensive presentations describing how geographic service areas smaller than nationwide should be adopted. In consideration of the abbreviated schedule of these proceedings, there is no need to repeat here any summary of the reasons presented by this broad group to reject nationwide licensing. The record provides ample support for such rejection.

In response to the comments of Markle, we believe that these proceedings do not provide an adequate opportunity to address the potentially controversial issues implicit in its proposals...grant of a single nationwide license to "a consortium of computer and software companies" to provide universal service. (Markle Comments, p. 8) Nor do we agree that

nationwide licensing is either necessary or appropriate to achieve effective nationwide coverage for new service offerings. Adoption of Markle's nationwide licensing proposal would result in lost competitive opportunities for small business and other designated entities, impairment or foreclosure of diverse innovative service offerings, lost opportunities for technology enhancements by multiple suppliers, delays in near-term economic growth and related job stimulation, among many other problems.

Many commenters in these proceedings have made thoughtful presentations regarding new service offerings which they propose to deploy on a market-by-market basis. The Commission should adopt geographic service area definitions, such as the BTAs which we support, so that these companies have realistic opportunities to compete for WCS licenses.

2. The Commission Should Expand Competitive Opportunities for Small Business, Rural Telephone and Others by Adopting its "Franchising" Proposals.

We agree with the commenters including BellSouth, Bell Communications, CPI, RTG and Vanguard Cellular who support adoption of the Commission's "franchise" or leased spectrum proposals. (NPRM, ¶¶ 16 and 29) Such "franchising" of the use of WCS spectrum is an important expansion of the opportunities for small business, rural telephone companies and other designated entities previously only available through set-asides, bid preferences or partitioning. As discussed here, we propose that such opportunities be made available in other CMRS services as well.

In order to make the benefits of "franchising" under proposed Section 27.16 of the Commission's rules, we suggest that the Commission articulate guidelines defining the

**“ultimate responsibility” of the licensee in this context. These guidelines are essential to provide a workable level of certainty for the participants in leasing arrangements that the requirements of this new rule section are being met.**

**In particular, we propose that the following are appropriate indicia of “ultimate responsibility” of the licensee for compliance purposes:**

- **Licensee will be responsible for meeting all FCC requirements, including the filing of applications, recordkeeping, responding to official inquiries, payment of fees and all other amounts due the FCC and any other requirements imposed on licensees;**
- **Licensee’s prior approval will be required before lessee commences construction of any new transmitter facilities, modifies any existing transmitter facilities or terminates operations of any such facilities;**
- **Licensee will have unimpeded access to all lessee transmitter sites;**
- **Licensee will make periodic inspection visits to transmitter, switching and service center sites of lessee;**
- **Licensee will have access to complete records of the lessee’s network facilities and network operations;**
- **Licensee will have authority to order the shutdown of any aspect of the lessee’s operations for non-compliance with FCC requirements and/or to remedy such non-compliance itself; and**
- **Licensee will have the right to terminate its lease arrangements with lessee in the event of any material breach by lessee of the FCC’s rules and policies.**

**We request that the Commission confirm that lease arrangements including the foregoing measures will be considered consistent with the “ultimate responsibility” contemplated in its new rule. We also request that the Commission delegate authority to the FCC staff to apply the foregoing “franchising” policy in other radio services such as**

broadband PCS, narrowband PCS, paging and other CMRS services. The benefits contemplated by the Commission from adoption of such new "franchising" opportunities are equally achievable in these services.

### CONCLUSION

We have focused our reply comments on two areas of the Commission's proposals both of which we believe could have a profound effect on the achievement of the Commission's pro-competitive goals. Nationwide licensing should be rejected as unfair, anti-competitive and contrary to the Commission's fundamental public interest goals. The Commission's "franchising" proposals should be adopted to expand competitive economic opportunities, innovation, diversity and rapid deployment of new service offerings.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By

  
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December 16, 1996

## CERTIFICATE OF SERVICE

I, Barbara Frank, a legal secretary in the law firm of Koteen & Naftalin, hereby certify that on the 16th day of December, 1996, copies of the foregoing "Reply Comments" were deposited in the U.S. mail, postage prepaid, addressed to:

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